



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

Mr. Darryl Tyler
Environmental Program Administrator
Air Quality Management Section
Delaware Department of Natural Resources
& Environmental Control
89 Kings Highway, P.O. Box 1401
Dover, DE 19903

Dear Mr Tyler:

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued it's opinion in Environmental Defense Fund (EDF) v. Environmental Protection Agency (EPA), No. 97-1637, that the EPA must make an affirmative determination that the submitted motor vehicle emission budgets contained in State Implementation Plans (SIPs) will not cause or increase violations or delay attainment of the National Ambient Air Quality Standards. This adequacy determination must be made before they are used to test the conformity of Transportation Improvement Programs (TIPs) or Long Range Transportation Plans. In addition, EPA agreed to make these submitted budgets available for public comment and respond to those comments when announcing our determination of their adequacy.

On May 28, 1998, EPA received "The Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area-Final Submission" SIP . On August 2, 1999, the availability of the SIP and the motor vehicle emission budgets was posted on EPA's WEB site for the purpose of soliciting public comment. The comment period closed on August 31, 1999 and no comments were received.

We have reviewed the motor vehicle budgets in accordance with the procedures and criteria for review in the following sections of the Conformity Rule: 40CFR Part 93, Sections §93.118(e)(4)(I) through (e)(4)(vi). The results of this review are detailed in Table 1. Based on its review, EPA has determined the budgets are not adequate. The motor vehicle budgets were not clearly identified and precisely quantified as required in 40CFR Part 93, Section §93.118(e)(4)(iii). We know that new motor vehicle emission budgets will soon be developed and we look forward to their submission. As required in EPA's agreement with EDF, we will be posting our determination on EPA's WEB site and we will also announce our determination in the Federal Register. That announcement should be made in the next couple of weeks.

At the time of this submittal the area was subject to the “build/no-build test”. Subsequently, in April, 1999, the budgets in the, “1999 Rate of Progress Plan for Kent and New Castle Counties” were found adequate. Thus, since that finding, conformity tests to those budgets have been applicable for conformity purposes in lieu of the “build/no-build test”, and this inadequacy finding for the May, 1998 Phase II budgets does not change that.

If you or your staff have any questions please feel free to Robert Kramer, Chief, Energy, Radiation and Indoor Environment Branch at (215) 814-2704, or Larry Budney at (215)-814-2184.

Sincerely,

Judith M. Katz, Director
Air Protection Division

cc: Anne P. Canby, Secretary, DLDOT
Tom Beatty, Division Administrator, FHWA

TABLE 1 - DELAWARE ATTAINMENT PLAN MVEB ADEQUACY REVIEW

Transportation Conformity Rule 40 CFR Part 93, § 93.118	Review Criteria	Was the Criterion Satisfied? If “Yes” How was this Criteria Satisfied? (Reference SIP Document/Comments if required)
Sec. 93.118(e)(4)(I)	Was the submitted control strategy implementation plan revision or maintenance plan endorsed by the Governor (or his or her designee) and subject to a State public hearing?	Yes. The submitted control strategy implementation plan revision was endorsed by the Governor (or his or her designee) and a public hearing was held.
Sec. 93.118(e)(4)(ii)	Before the control strategy implementation plan or maintenance plan was submitted to EPA, did consultation among federal, State and local agencies occur; was full implementation plan documentation provided to EPA, and was EPA’s stated concerns, if any, addressed?	Yes. Consultation has occurred between all required federal, state and local agencies.
Sec. 93.118(e)(4)(iii)	Was the motor vehicle emissions budget(s) clearly identified and precisely quantified?	No. There was no defined conformity budget in the SIP submittal.
Sec. 93.118(e)(4)(iv)	Is the motor vehicle emissions budget(s), when considered together with all other emission reductions, consistent with applicable requirements for attainment?	Not applicable, since no conformity budget was defined in the SIP submittal.

Transportation Conformity Rule 40 CFR 93.118	Review Criteria	Was the Criterion Satisfied? If “Yes” How was this Criteria Satisfied? (Reference SIP Document/Comments if required)
Sec. 93.118(e)(4)(v)	Is the motor vehicle emissions budget(s) consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision?	Not applicable, since no conformity budget was defined in the SIP submittal.
Sec. 93.118(e)(4)(vi)	Revisions to previously submitted control strategy implementation plans or maintenance plans: explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see Sec. 93.101 for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).	Not Applicable. This is the first submittal of the attainment SIP.
Sec. 93.118(e)(5)	Did they provide and we review public comments and the State’s responses to those comments with the submitted control strategy SIP?	Yes.